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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 *In re Wells Fargo Mortgage*
12 *Discrimination Litigation.*
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Case No. 3:22-cv-00990-JD

Honorable James Donato

**STIPULATED PROTECTIVE
ORDER**

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21 **1. PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve production
23 of confidential, proprietary, or private information for which special protection from
24 public disclosure and from use for any purpose other than prosecuting this litigation
25 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
26 to enter the following Stipulated Protective Order. The parties acknowledge that this
27 Order does not confer blanket protections on all disclosures or responses to discovery
28 and that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
 2 applicable legal principles. The parties further acknowledge, as set forth in Section
 3 12.3, below, that this Stipulated Protective Order does not entitle them to file
 4 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
 5 that must be followed and the standards that will be applied when a party seeks
 6 permission from the court to file material under seal.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the
 9 designation of information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
 11 how it is generated, stored or maintained) or tangible things that, consistent with
 12 Federal Rule of Civil Procedure 26, contain or reflect confidential, proprietary,
 13 commercially sensitive, and/or private information of an individual or entity.

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House
 15 Counsel (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or
 17 items that it produces in disclosures or in responses to discovery as
 18 “CONFIDENTIAL.”

19 2.5 Disclosure or Discovery Material: all items or information, regardless
 20 of the medium or manner in which it is generated, stored, or maintained (including,
 21 among other things, testimony, transcripts, and tangible things), that are produced or
 22 generated in disclosures or responses to discovery in this matter.

23 2.6 Expert: a person with specialized knowledge or experience in a matter
 24 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 25 an expert witness or as a consultant in this action.

26 2.7 House Counsel: attorneys who are employees of a party to this action.
 27 House Counsel does not include Outside Counsel of Record or any other outside
 28

1 counsel.

2 2.8 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.9 Outside Counsel of Record: attorneys who are not employees of a
5 party to this action but are retained to represent or advise a party to this action and
6 have appeared in this action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this action.

13 2.12 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 **3. SCOPE**

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or extracted
24 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
25 Protected Material; and (3) any testimony, conversations, or presentations by Parties
26 or their Counsel that might reveal Protected Material. However, the protections
27 conferred by this Stipulation and Order do not cover the following information: (a)
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1 any information that is in the public domain at the time of disclosure to a Receiving
2 Party or becomes part of the public domain after its disclosure to a Receiving Party as
3 a result of publication not involving a violation of this Order, including becoming part
4 of the public record through trial or otherwise; and (b) any information known to the
5 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
6 disclosure from a source who obtained the information lawfully and under no
7 obligation of confidentiality to the Designating Party. Any use of Protected Material
8 at trial shall be governed by a separate agreement or order.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition shall be
13 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
14 without prejudice; and (2) final judgment herein after the completion and exhaustion
15 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
16 limits for filing any motions or applications for extension of time pursuant to
17 applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under
21 this Order must take care to limit any such designation to documents that qualify
22 under the appropriate standards.

23 5.2 Mass, indiscriminate, or routinized designations are prohibited.

24 Designations that are shown to be clearly unjustified or that have been made for an
25 improper purpose (e.g., to unnecessarily encumber or retard the case development
26 process or to impose unnecessary expenses and burdens on other parties) expose the
27 Designating Party to sanctions.
28

1 If it comes to a Designating Party's attention that information or items that it
 2 designated for protection do not qualify for protection, that Designating Party must
 3 promptly notify all other Parties that it is withdrawing the mistaken designation.

4 5.3 Manner and Timing of Designations. Except as otherwise provided in
 5 this Order (see, e.g., second paragraph of section 5.3(a) below), or as otherwise
 6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 7 under this Order must be clearly so designated before the material is disclosed or
 8 produced.

9 Designation in conformity with this Order requires:

10 (a) For information in documentary form (e.g., paper or electronic
 11 documents, but excluding transcripts of depositions or other pretrial or trial
 12 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
 13 document¹ that contains protected material. If only one document in a document
 14 "family" (e.g., a document plus its attachments) qualifies for protection, the Producing
 15 Party shall only designate the individual document entitled to protection under Section
 16 2.2, above.

17 A Party or Non-Party that makes original documents or materials available for
 18 inspection need not designate them for protection until after the inspecting Party has
 19 indicated which material it would like copied and produced. During the inspection
 20 and before the designation, all of the material made available for inspection shall be
 21 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
 22 it wants copied and produced, the Producing Party must determine which documents,
 23 qualify for protection under this Order. Then, before producing the specified
 24 documents, the Producing Party must affix the "CONFIDENTIAL" legend to all
 25 pages of each document that contains Protected Material. If only one document in a
 26

27 ¹ A document does not include attachments to the documents or document "families," but is
 28 intended to mean a single document (e.g., an e-mail would be one document and an attachment to
 the e-mail would be a separate document).

document “family” (e.g., a document plus its attachments) qualifies for protection, the Producing Party shall only designate the individual document entitled protection under Section 2.2, above.

(b) For testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute

1 resolution process by providing written notice of each designation it is challenging
2 and describing the basis for each challenge. To avoid ambiguity as to whether a
3 challenge has been made, the written notice must recite that the challenge to
4 confidentiality is being made in accordance with this specific paragraph of the
5 Protective Order. The parties shall attempt to resolve each challenge in good faith
6 and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of
8 notice. In conferring, the Challenging Party must explain the basis for its belief that
9 the confidentiality designation was not proper and must give the Designating Party
10 an opportunity to review the designated material, to reconsider the circumstances,
11 and, if no change in designation is offered, to explain the basis for the chosen
12 designation. A Challenging Party may proceed to the next stage of the challenge
13 process only if it has engaged in this meet and confer process first or establishes that
14 the Designating Party is unwilling to participate in the meet and confer process in a
15 timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
17 court intervention, the Designating Party shall file and serve a motion to retain
18 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
19 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
20 days of the parties agreeing that the meet and confer process will not resolve their
21 dispute, whichever is earlier. Each such motion must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and
23 confer requirements imposed in the preceding paragraph. Failure by the
24 Designating Party to make such a motion including the required declaration within
25 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
26 designation for each challenged designation. In addition, the Challenging Party may
27 file a motion challenging a confidentiality designation at any time if there is good
28

1 cause for doing so, including a challenge to the designation of a deposition transcript
 2 or any portions thereof. Any motion brought pursuant to this provision must be
 3 accompanied by a competent declaration affirming that the movant has complied
 4 with the meet and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the
 6 Designating Party. Frivolous challenges, and those made for an improper purpose
 7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 9 the confidentiality designation by failing to file a motion to retain confidentiality as
 10 described above, all parties shall continue to afford the material in question the level
 11 of protection to which it is entitled under the Producing Party's designation until the
 12 court rules on the challenge.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that
 15 is disclosed or produced by another Party or by a Non-Party in connection with this
 16 case only for prosecuting, defending, or attempting to settle this litigation. Such
 17 Protected Material may be disclosed only to the categories of persons and under the
 18 conditions described in this Order. When the litigation has been terminated, a
 19 Receiving Party must comply with the provisions of section 13 below (FINAL
 20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a
 22 location and in a secure manner that ensures that access is limited to the persons
 23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 25 otherwise ordered by the court or permitted in writing by the Designating Party, a
 26 Receiving Party may disclose any information or item designated
 27 "CONFIDENTIAL" only to:
 28

1 (a) The Receiving Party's Outside Counsel of Record in this action, as well
 2 as employees of said Outside Counsel of Record to whom it is reasonably necessary
 3 to disclose the information for this litigation;

4 (b) The officers, directors, and employees (including House Counsel) of
 5 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
 7 disclosure is reasonably necessary for this litigation and who have signed the
 8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) The court and its personnel;

10 (e) Court reporters and their staff, professional jury or trial consultants,
 11 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
 12 for this litigation and who have signed the "Acknowledgment and Agreement to Be
 13 Bound" (Exhibit A);

14 (f) During their depositions, witnesses in the action to whom disclosure is
 15 reasonably necessary and who have signed the "Acknowledgment and Agreement to
 16 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
 17 by the court, and provided that they will not be permitted to keep any Protected
 18 Material. Pages of transcribed deposition testimony or exhibits to depositions that
 19 reveal Protected Material must be separately bound by the court reporter and may
 20 not be disclosed to anyone except as permitted under this Stipulated Protective
 21 Order; or

22 (g) Potential witnesses (1) who authored or previously received a
 23 document, (2) for whom disclosure is reasonably necessary, and (3) who have
 24 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 26 **PRODUCED IN OTHER LITIGATION**

27 If a Party is served with a subpoena or a court order issued in other litigation
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1 that compels disclosure of any information or items designated in this action as
 2 “CONFIDENTIAL,” that Party must:

3 (a) Promptly notify in writing the Designating Party. Such notification
 4 shall include a copy of the subpoena or court order;

5 (b) Promptly notify in writing the party who caused the subpoena or order
 6 to issue in the other litigation that some or all of the material covered by the
 7 subpoena or order is subject to this Protective Order. Such notification shall include
 8 a copy of this Stipulated Protective Order; and

9 (c) Cooperate with respect to all reasonable procedures sought to be
 10 pursued by the Designating Party whose Protected Material may be affected.

11 (d) If the Designating Party timely seeks a protective order, the Party
 12 served with the subpoena or court order shall not produce any information
 13 designated in this action as “CONFIDENTIAL” before a determination by the court
 14 from which the subpoena or order issued, unless the Party has obtained the
 15 Designating Party’s permission. The Designating Party shall bear the burden and
 16 expense of seeking protection in that court of its confidential material – and nothing
 17 in these provisions should be construed as authorizing or encouraging a Receiving
 18 Party in this action to disobey a lawful directive from another court.

19 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 20 **PRODUCED IN THIS LITIGATION**

21 (a) The terms of this Order are applicable to information produced by a
 22 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
 23 produced by Non-Parties in connection with this litigation is protected by the
 24 remedies and relief provided by this Order. Nothing in these provisions should be
 25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
 27 produce a Non-Party’s confidential information in its possession, and the Party is
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1 subject to an agreement with the Non-Party not to produce the Non-Party's
 2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-
 4 Party that some or all of the information requested is subject to a confidentiality
 5 agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
 7 Protective Order in this litigation, the relevant discovery request(s), and a
 8 reasonably specific description of the information requested; and

9 (3) make the information requested available for inspection by the
 10 Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this
 12 court within 14 days of receiving the notice and accompanying information, the
 13 Receiving Party may produce the Non-Party's confidential information responsive
 14 to the discovery request. If the Non-Party timely seeks a protective order, the
 15 Receiving Party shall not produce any information in its possession or control that is
 16 subject to the confidentiality agreement with the Non-Party before a determination
 17 by the court. Absent a court order to the contrary, the Non-Party shall bear the
 18 burden and expense of seeking protection in this court of its Protected Material.

19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 21 Protected Material to any person or in any circumstance not authorized under this
 22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 23 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 24 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 25 persons to whom unauthorized disclosures were made of all the terms of this Order,
 26 and (d) request such person or persons to execute the "Acknowledgment and
 27 Agreement to Be Bound" that is attached hereto as Exhibit A.
 28

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 (a) The inadvertent production of documents (including both paper
4 documents and electronically stored information) subject to protection by the
5 attorney-client, the Bank Examination privilege and/or protected by the work-
6 product, joint defense or other similar doctrine, or by another legal privilege
7 protecting information from discovery, shall not constitute a waiver of any privilege
8 or other protection, provided that the producing party promptly notifies the receiving
9 party, in writing, of the production after its discovery of the same.

10 (b) If the producing party notifies the receiving party promptly after
11 discovery that privileged materials (hereinafter referred to as the “Identified
12 Materials”) have been inadvertently produced, the Identified Materials and all
13 copies of those materials shall be returned to the producing party or destroyed or
14 deleted, on request of the producing party. If the receiving party has any notes or
15 other work product reflecting the contents of the Identified Materials, the receiving
16 party will not review or use those materials unless a court later designates the
17 Identified Materials as not privileged or protected.

18 (c) The Identified Materials shall be deleted from any systems used to
19 house the documents, including document review databases, e-rooms and any other
20 location that stores the documents. The receiving party may make no use of the
21 Identified Materials during any aspect of this matter or any other matter, including
22 in depositions or at trial, unless the documents are later designated by a court as not
23 privileged or protected or unless any such privilege or protection is deemed to have
24 been waived.

25 (d) The contents of the Identified Materials shall not be disclosed to
26 anyone who was not already aware of the contents of them before the notice was
27 made.
28

(e) If any receiving party is in receipt of a document from a producing party which the receiving party has reason to believe is privileged, the receiving party shall in good faith take reasonable steps to promptly notify the producing party of the production of that document so that the producing party may make a determination of whether it wishes to have the documents returned or destroyed pursuant to this Stipulated Protective Order.

(f) The party returning the Identified Materials may move the Court for an order compelling production of some or all of the material returned or destroyed.

(g) The parties agree that this Order is an Order entered under Rule 502(d) of the Federal Rules of Evidence and that the inadvertent disclosure of Identified Materials is not a waiver of the privilege in any other federal or state proceeding.

(h) This stipulated agreement and its subparts does not constitute a concession by any party that any documents are subject to protection by the attorney-client privilege, the work product doctrine or any other potentially applicable privilege or doctrine. This agreement also is not intended to waive or limit in any way either party's right to contest any privilege claims that may be asserted with respect to any of the documents produced except to the extent stated in the agreement.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the

1 Designating Party or a court order secured after appropriate notice to all interested
2 persons, a Party may not file in the public record in this action any Protected
3 Material. A Party that seeks to file under seal any Protected Material must comply
4 with Civil Local Rule 79-5. Protected Material may only be filed under seal
5 pursuant to a court order authorizing the sealing of the specific Protected Material at
6 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
7 request establishing that the Protected Material at issue is privileged, protectable as
8 a trade secret, or otherwise entitled to protection under the law. If a Receiving
9 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
10 5 is denied by the court, then the Receiving Party may file the information in the
11 public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the
12 court.

13 **13. FINAL DISPOSITION**

14 Within 60 days after the final disposition of this action, as defined in
15 paragraph 4, each Receiving Party must return all Protected Material to the
16 Producing Party or destroy such material. As used in this subdivision, "all Protected
17 Material" includes all copies, abstracts, compilations, summaries, and any other
18 format reproducing or capturing any of the Protected Material. Whether the
19 Protected Material is returned or destroyed, the Receiving Party must submit a
20 written certification to the Producing Party (and, if not the same person or entity, to
21 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
22 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
23 that the Receiving Party has not retained any copies, abstracts, compilations,
24 summaries or any other format reproducing or capturing any of the Protected
25 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
26 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
27 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
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1 work product, and consultant and expert work product, even if such materials
2 contain Protected Material. Any such archival copies that contain or constitute
3 Protected Material remain subject to this Protective Order as set forth in Section 4
4 (DURATION).

5
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: April 4, 2023

ELLIS GEORGE CIPOLLONE
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7 DATED: April 4, 2023

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10 By: /s/ Alicia A. Baiardo
Alicia A. Baiardo
11 Attorneys for Defendant Wells Fargo
12
13

14 PURSUANT TO STIPULATION, **IT IS SO ORDERED.**

15 Dated:

16 UNITED STATES DISTRICT JUDGE
James Donato
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Northern District of California on
[date] in the case of *In re Wells Fargo Mortgage Discrimination Litigation*. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

ATTORNEY ATTESTATION

Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Dennis S. Ellis

Dennis S. Ellis